

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA)	CASE NO: 1:20-CR-00731
)	
Plaintiff,)	
)	JUDGE PAMELA A. BARKER
vs.)	
)	<u>DEFENDANT'S</u>
ERIC KING)	<u>TRIAL BRIEF</u>
Defendant.)	
)	
)	

Now comes the Defendant Eric King, by and through counsel, Timothy Hess, and respectfully submits the following trial brief in accordance with this Court's Trial Order.

Respectfully submitted,

/s/ Tim A. Hess

Timothy A. Hess, Esq. (0074995)
T. Hess & Associates, LLC
55 Public Square, Suite 1700
Cleveland, Ohio 44113
Phone: (216) 696-2915
Cell: (216) 262-7405
Fax: (216) 696-2915
Email: timhess22@me.com

I. STATEMENT OF FACTS

In Count 1 of the Amended Indictment the Government charged King and other alleged co-conspirators in a conspiracy and scheme to commit health care fraud. More specifically, the Amended Indictment alleged that the co-conspirators defrauded Medicaid and Medicaid managed care entities by, among other things:

- submitting, or causing to be submitted, billings to Medicaid for counseling services not actually performed;
- submitting, or causing to be submitted, billings to Medicaid for counseling services that were not actually performed for the amount of time the billing codes reflected; and
- inserting, or caused to be inserted, false progress notes into Medicaid beneficiary electronic records and/or creating false progress notes.

(Amended Indictment, pg. 10-11).

Counts 2-11 of the Amended Indictment charged King with health care fraud by causing Eye for Change to bill Medicaid for:

- Ct. (2) Client N.D., for the service date 10/18/2019, using billing code H2019;
- (3) Client V.C., for the service date 5/12/2020, using billing code H2019;
- (4) Client C.M., for the service date of 7/13/2018, using billing code H2019;
- (5) Client K.C., for the service date of 5/23/2019 using billing code H2019;
- (6) Client M.R., for the service date of 5/30/2019 using billing code H2019;
- (7) Client E.H., for the service date of 8/20/2019 using billing code H2019;
- (8) Client H.T., for the service date of 7/31/2019 using billing code H2019;
- (9) Client H.T., for the service date of 11/6/2019 using billing code H2019;
- (10) Client H.T., for the service date of 2/29/2020 using billing code H2019;

(11) Client X.W., for the service date of 3/2/2020 using billing code H2019.

(Amended Indictment, pg. 25-26)

Counts 12-22 of the Amended Indictment the Government charged King with health care fraud by causing Eye for Change to bill Medicaid for services not actually performed:

Ct. (12) Client H.T., for the service date 4/10/2021, using billing code H2019;

(13) Client H.T., for the service date 4/17/2021, using billing code H2019;

(14) Client X.W., for the service date 10/7/2020, using billing code H2019;

(15) Client X.W., for the service date 11/8/2020, using billing code H2019;

(16) Client N.D., for the service date 3/4/2021, using billing code H2019;

(17) Client N.D., for the service date 3/29/2021, using billing code H2019;

(18) Client T.H., for the service date 12/26/2020, using billing code H2019;

(19) Client E.G., for the service date 12/26/2020, using billing code H2019;

(20) Client E.G., for the service date 12/26/2020, using billing code H2019;

(21) Client J.M., for the service date 12/26/2020, using billing code H2019.

(22) Client C.P., for the service date 2/3/2021, using billing code H2019.

Counts 23 and 24 of the Amended Indictment the Government charged King with false statements relating to health care matters by creating false progress notes purporting to document in-person services that were not actually rendered, on the following dates, to the following Medicaid clients, in connections with claims for reimbursement:

Ct. (23) Client N.D., on purported service date: 7/23/2019;

(24) Client V.C., on purported service date: 5/8/2020.

(Amended Indictment, pg. 23-24).

Counts 25 through 30 of the Amended Indictment the Government

charged King with aggravated identity theft by using the identification of persons, without authorization, to bill Medicaid for:

Ct. (25) Client H.T., for the service date 4/10/2021 billing under Company 2;

(26) Client H.T., for the service date 11/16/2019 billing under Eye for Change;

(27) Client X.W., for the service date 11/18/2020 billing under Company 2;

(28) Client X.W., for the service date 3/2/2020 billing under Eye for Change;

(29) Client N.D., for the service date 3/29/2021 billing under Company 2;

(30) Client E.H., for the service date 8/20/2019 billing under Eye for Change.

(Amended Indictment, pg. 29).

II. CONTROLLING LAW

The Amended Indictment charges Defendant King with four types of offenses: conspiracy to commit health care fraud (Count 1), health care fraud (Counts 2-11 and 12-22), false statements in medical records (Counts 23-24), and aggravated identity theft (Counts 25-30).

A. Count 1 (Conspiracy to Commit Health Care Fraud)

The elements of conspiracy to commit health care fraud are as follows:

First, that two or more persons **conspired, or agreed**, to commit the crime of health care fraud.

Second, that the defendant **knowingly and voluntarily joined the conspiracy**.

It is the position of the Defendant that he never agreed to or conspired to commit the crime of health care fraud.

It is the position of the Defendant that if said fraud was occurring, he did not knowingly participate, nor did he voluntarily join in the conspiracy.

B. Counts 2-11 and 12-22 (Health Care Fraud)

The elements of health care fraud are as follows:

First, that the defendant knowingly and willfully executed or attempted to execute a scheme to defraud any health care benefit program, or to obtain, by means of false or fraudulent pretenses, representations, or promises any of the money or property owned by or in the control of a health care benefit program—here, Medicare, CareSource, Medical Mutual, Anthem, United Health Care, Buckeye, Paramount and Aetna—in connection with the delivery of or payment for health care benefits, items, or services.

Second, that the scheme related to a material fact or included a material misrepresentation or concealment of a material fact.

Third, that the defendant had the intent to defraud.

C. Counts 23-24 (False Statements in Medical Records)

The elements of false statements in medical records are as follows:

First, that the defendant made or used a materially false writing or document, knowing that the materially false writing or document contained a materially false, fictitious, or fraudulent statement or entry.

Second, that the defendant did so in connection with the delivery of or payment for health care benefits, items, or services involving a health care benefit program.

Third, that the defendant did so knowingly and willfully.

D. Counts 25-30 (Aggravated Identity Theft)

The elements of aggravated identity theft as it relates to these charges are as follows:

First, that the defendant committed the felony violation of Health Care Fraud, 18 U.S.C. § 1347 charged in the following counts³²:

Ct. (25) Count 12;

(26) Count 9;

(27) Count 15;

(28) Count 11;

(29) Count 17;

(30) Count 7.

The violation charged in counts 12, 9, 15, 11, 17, and 7 are a felony violation listed in the statute.

Second, that the defendant knowingly transferred, possessed, or used a means of identification of another person without lawful authority.

Third, that the defendant knew the means of identification belonged to another person. Fourth, that the transfer, possession, or use was during and in relation to the felony of Health Care Fraud, 18 U.S.C. § 1347 charged in Counts 12, 9, 15, 11, 17, and 7.

It is the position of the Defendant that he never knowingly transferred, possessed, or used a means of identification of another person without lawful authority.

Furthermore, it is the position of the Defendant that if said fraud was occurring, he did not knowingly participate, nor did he voluntarily commit the offense if identity theft.

Respectfully submitted,

/s/ Tim A. Hess

Timothy A. Hess, Esq. (0074995)
T. Hess & Associates, LLC
55 Public Square, Suite 1700
Cleveland, Ohio 44113
Phone: (216) 696-2915
Cell: (216) 262-7405

Fax: (216) 696-2915
Email: timhess22@me.com

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2023, a copy of the foregoing *Defendant's Trial Brief* was filed electronically and emailed to the Assistant U.S. Attorneys representing the Government. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Pay access this filing through the Court's system.

/s/ Tim A. Hess
Timothy Hess, Esq. (0074995)
Attorney for Defendant